Supreme Court, U.S.
FILED
AUG 14 2000
CLERK

No. 99-1434

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

THE MEAD CORPORATION,
Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the Federal Circuit

BRIEF AMICUS CURIAE OF THE JOINT INDUSTRY GROUP, THE ALLIANCE OF AUTOMOBILE MANUFACTURERS AND THE INTERNATIONAL MASS RETAIL ASSOCIATION IN SUPPORT OF RESPONDENT'S OPPOSITION TO THE BRIEF FOR THE UNITED STATES

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BRIEF *AMICUS CURIAE*

Pursuant to Supreme Court Rule 37.3(a) on written consent of all parties, the Joint Industry Group, the Alliance of Automobile Manufacturers and the International Mass Retail Association respectfully submit this brief *amicus curiae* in support of respondent The Mead Corporation's (Mead) opposition to the Government's position in this case.[1]

INTERESTS OF *AMICUS CURIAE*

The Joint Industry Group is a coalition of over 160 companies, trade associations and businesses actively involved in international trade, which represents the interests of its members before the Customs Service, the Department of Commerce, the United States Trade Representative, other government agencies and the Congress. The members of the Alliance of Automobile Manufacturers ("Alliance") include thirteen global manufacturers of cars and light trucks. The Alliance represents the interests of its members in public policy matters, with particular emphasis on vehicle safety, the environment, and customs procedures, among other issues. The International Mass Retail Association is the world's leading alliance of retailers and their product and service suppliers, representing over 200 retail companies and 550 supplier companies before both the Federal and State governments.

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[1] This brief was not authored in whole or in part by counsel for a party to this case. No person or entity, other than the *amicus curiae*, its members, or its counsel, made a monetary contribution to the preparation or submission of the brief. The individual members of each association included within the *amicus curiae* are listed in the Appendix.

The members of these associations either are importers or assist importers. They request thousands of rulings from the Customs Service annually and, when necessary, litigate adverse rulings in the Court of International Trade and the Court of Appeals for the Federal Circuit. The decision of the Court in this case will directly affect their decisions on whether to seek pre-importation guidance from the Customs Service on the classification of imported merchandise and other laws enforced by Customs through the administrative rulings process or, alternatively, to by-pass the rulings process entirely and rely ultimately on the courts for guidance on the construction of the tariff laws.

STATEMENT

For more than a century,[2] importers have sought guidance from the United States Customs Service on how imported products should be classified and appraised under the various tariff laws that have been enacted by Congress. The Customs Service has provided that guidance through ruling letters. These are almost always issued in response to an importer's written request[3] and, according to the procedural regulations issued by Customs, are limited to the facts presented in the request and binding only on Customs with respect to the importer who requested the ruling.[4] The importer

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2 The Customs Service has been issuing such decisions at least since 1868. U.S. Treasury Dep't, *Synopsis of Sundry Decisions Rendered by the Treasury Department under the Tariff and Other Acts*, - U.S. Gov't Printing Office (1869).

3 On occasion Customs issues rulings in response to internal inquiries from its field personnel without any notice to parties in the importing community that may be affected by the decisions therein.

4 19 C.F.R. § 177.9(a).

is also bound to follow the ruling,[5] unless and until the ruling is overturned by the courts, or revoked or modified by Customs in accordance with the procedures set forth in 19 U.S.C. § 1625(c). Rulings are issued by customs officials at ports of entry (principally, New York) and the Office of Regulations and Rulings at Customs headquarters in Washington, D.C.[6]

At present, importers make extensive use of the ruling letter procedure for obtaining Customs' current position on various issues, including the classification and appraisement of the millions of different products that enter the country. Customs also issues ruling letters on, among other things, country of origin and country of origin marking; drawback; trademarks and copyrights; the entry of merchandise; foreign trade zones; the entry and clearance of vessels, vehicles and aircraft entering and leaving the United States; customs bonds; customs brokers; vessel repairs; overtime charges; and the merchandise processing and harbor maintenance fees. Rulings on these topics vary little from rulings on classification and appraisement,[7] except for the subject matter. While classification rulings tend to be very brief,[8] simply stating the

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5 19 C.F.R. § 177.8(a)(2).

6 19 C.F.R. § 177.2(a).

7 19 U.S.C. § 1502(a), the legislative authority relied on by the Government, only mentions classification, appraisement, and the assessment of duties.

8 In 1999, Customs' field officers at the ports issued approximately 10,000 brief classification rulings, and the Office of Regulations and Rulings issued almost 600 classification rulings containing a fuller discussion and analysis of the facts and applicable law. This information was obtained through a query of Fuglei's "Customs Info" CD-ROM database, which is commercially available and widely used in the trade community. The query covered classification rulings issued in calendar year 1999.

facts and Customs' opinion as to the correct classification, some rulings from Customs headquarters do provide a fuller analysis of the facts and applicable law.[9]

The substance of a ruling letter involving classification, whether it be brief or expansive in explaining how the conclusion was reached, can, with one exception,[10] only be challenged by the importer through filing an administrative protest contesting the liquidation of an entry covering an actual importation of the product. Such a protest may be filed, however, even though the importer did not obtain a ruling. If the protest is denied by Customs, the importer may obtain judicial review of Customs' classification decision by filing a summons in the Court of International Trade.

This case presents the narrow question of whether the courts must defer under *Chevron U.S.A., Inc. v. Natural*

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9 Nearly all rulings result from an importer-initiated request and are made available electronically through the Internet on Customs' website, or through private publishers to whom Customs provides the rulings electronically. Other than revocations or modifications of existing rulings that must by law be published in the Customs Bulletin and Decisions (the Customs Service's "official" publication), these rulings are not required to be published. In fact, only seven rulings or other documents announcing Customs' position on a classification matter have appeared in that publication since 1996. Of these seven, five were published in 1996 (T.D. 96-5, T.D. 96-7, T.D. 96-24, T.D. 96-80, and General Notice: Tariff Classification of Hydraulic Mine Roof Shield Supports). Only two have been published since 1997 (C.S.D. 97-1 and General Notice: Guidance Concerning the Tariff Classification of Pharmaceutical Products Imported for Clinical Research).

10 Rulings can be challenged directly in the Court of International Trade without filing a protest upon a showing of irreparable harm. *See* 28 U.S.C. § 1581(h).

Resources Defense Council, Inc., 467 U.S. 837 (1984), to the tariff classification rulings issued by the Customs Service. The decision of this Court is likely to have broad ramifications for importers. Unless this Court continues to adhere to the "bright line" rule announced in *Chevron* and reaffirmed in *United States v. Haggar Apparel Co.*, 526 U.S. 380 (1999), and most recently in *Christensen v. Harris County*, 120 S. Ct. 1655 (2000), which limited deference to interpretive regulations promulgated under the Administrative Procedure Act,[11] the decision will inject greater uncertainty and less uniformity into the law than exist today, contrary to the Government's assertion, and will result in increased litigation and, thus, increased costs to business.

SUMMARY OF ARGUMENT

Extending *Chevron* deference to tariff classification rulings is both legally and commercially inappropriate. Applicable judicial precedent draws a clear, workable distinction between regulations, which have the force of law, and rulings, which do not. This Court's decisions emphasize that *Chevron* deference is warranted only when agencies act pursuant to a Congressional delegation of authority. In the most recent decision of this Court discussing *Chevron* deference, *Christensen v. Harris County*, this Court refused to extend *Chevron* to an agency's ruling letter. Here, where again the Government argues that this Court should give controlling weight to an agency's ruling letter, it cites 19 U.S.C. § 1502(a) as a specific Congressional delegation of authority. We submit, however, that a plain reading of the statute and its legislative history establishes that such rulings are simply another form of

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11 5 U.S.C. § 551 *et seq.*

general information on classification and appraisement that Congress has long directed should be disseminated to Customs officials at ports of entry to ensure that imported merchandise arriving at any port in the country is treated fairly and uniformly. The Government's attempt to dignify customs "binding rulings" as a form of delegated lawmaking therefore fails.

Practical and commercial considerations also militate against extending *Chevron* deference to classification rulings. First, there is no simple way to distinguish classification rulings from Customs' interpretive pronouncements in other contexts. There are many types of rulings and interpretive statements, of varying degrees of applicability and persuasiveness. Customs ruling letters themselves are "binding" in only a limited sense, as they bind only the requesting party and the Customs Service and are limited to the facts presented in the request, be it from an importer or a customs officer. Other types of rulings and agency pronouncements may be of broader applicability and carry more precedential weight. Tariff classification rulings are frequently revoked or modified, and therefore, at the time a ruling is issued Customs explicitly warns third parties not to rely upon them. Given the wide variety of agency interpretive statements (rulings and otherwise), granting *Chevron* deference to this category of rulings would create great uncertainty as to the level of deference due to Customs' numerous other kinds of pronouncements.

The commercial considerations weighing against the Government's position in this case also include the likely effect on the behavior of private parties. Granting *Chevron* deference to classification rulings would undermine the current legal framework that seeks to promote uniformity and predictability

in commercial transactions by encouraging importers to seek guidance from Customs. If courts were to give classification rulings *Chevron* deference, importers would be discouraged from seeking such advance guidance because of the risk of having to bear a higher burden in a subsequent judicial challenge. Importers would instead have the incentive to litigate classification disputes directly in court, without having obtained an advance ruling. Thus, it is highly likely that granting *Chevron* deference to such rulings would result in greater uncertainty and more litigation for the trade community.

ARGUMENT

I. The Applicable Judicial Precedent Rightly Distinguishes Regulations from Rulings.

The decision of the United States Court of Appeals for the Federal Circuit in this case correctly followed this Court's decision in *United States v. Haggar Apparel Co.*, 526 U.S. 380 (1999), in determining the type of agency action that warrants controlling-weight deference under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The Federal Circuit concluded that *Chevron* deference should not be extended to ordinary classification rulings. *Mead Corp. v. United States*, 185 F.3d 1304, 1307 (Fed. Cir. 1999). This Court in *Christensen v. Harris County*, 120 S. Ct. 1655 (2000), reaffirmed this principle and clarified that *Chevron* deference is warranted only where agency action has the force of law, as when it promulgates regulations under the Administrative Procedure Act. Informal administrative ruling letters of the type at issue in this case do not have the force of law, and therefore are not entitled to *Chevron* deference. Such rulings have a limited purpose to provide only the importer who asked for the ruling with certainty as to the rate of duty on goods it

intends to import and to ensure that the same classification and rate of duty will be applied by customs officers "at the various ports of entry." 19 U.S.C. § 1502(a).

A. Rulings, Unlike Regulations, Do Not Have the Force of Law.

In the initial classification ruling in this case, Customs informed Mead that, for tariff classification purposes, its product is an "other (nonenumerated) article[ ] similar to registers, account books, notebooks, receipt books and diaries."[12] Customs subsequently reversed the initial ruling and classified the product as a bound diary.[13] This ruling did not contain general guidelines, and it was not subject to notice-and-comment or any other form of reasoned or deliberative rulemaking. In fact, the customs regulations caution importers about the limited application of such interpretive rulings, stating that "[n]o other person should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter." 19 C.F.R. § 177.9(c). Thus, the customs regulations provide that the classification ruling here can only be applied to Mead and cannot be relied upon by other parties.[14]

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12 N.Y. Ruling 864206 (June 19, 1991).

13 Headquarters Ruling 953126 (Jan. 11, 1993).

14 The government cites to the provision of the regulations that makes such rulings binding on all Customs officials (19 C.F.R. § 177.9(a)) to somehow suggest that the rulings have greater force. This argument is misplaced. The binding nature of such rulings is intended to promote the goal of uniformity among the ports. This is not the same, however, as adopting a rule of general applicability that has the force of law as to parties other than Customs and the applicant.

B. *Chevron* Deference is Warranted Only When Agencies Act Pursuant to a Congressional Delegation of Authority.

The object of deference to agency action under *Chevron* is to give effect to the intent of Congress where it has delegated its lawmaking authority. *See* John F. Manning, *Constitutional Structure and Judicial Deference to Agency Interpretations of Agency Rules*, 96 Colum. L. Rev. 612 (1996). In this way, the courts do not usurp power granted to the executive branch. As this Court noted in *Chevron*, the courts should not engage in policy determinations that are vested in other branches. 467 U.S. at 866, citing *TVA v. Hill*, 437 U.S. 153, 195 (1978).

The decisions of this Court have established an effective and comprehensive framework for the courts to use in determining when to accord *Chevron*-style deference to a given agency action. This framework rests on the separation of powers and the very limited role of the judiciary. This Court has drawn a clear path for agencies and the courts: where deference is sought or to be given, the agency must be engaged in a deliberative process of lawmaking. If not, as here, the policy concerns raised by this Court in *Chevron* are absent and deference of that type is unwarranted.[15]

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15 As indicated in Respondent's Supplemental Brief, the government has failed to raise the question of whether a lesser deference standard is available; the consideration of such a standard has therefore been waived.

C. This Court in *Christensen* Recognized that Rulings of this Type are Not Entitled to *Chevron* Deference.

This Court properly accorded *Chevron* deference to duly promulgated regulations in *United States v. Haggar Apparel Co.* However, in *Haggar*, a primary consideration was that the agency engaged in notice and comment rulemaking in promulgating the regulation at issue. 526 U.S. at 390. To deny deference to an agency action of this nature "implies a significant departure from conventional contemporary administrative practice." *Id.* In *Christensen*, by contrast, this Court confronted "an interpretation contained in an opinion letter, not one arrived at after, for example, a formal adjudication or notice-and-comment rulemaking." 120 S. Ct. at 1662. In holding that the opinion letter was not entitled to *Chevron* deference, the Court stated:

> Interpretations such as those in opinion letters – like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law – do not warrant *Chevron*-style deference.

Id. Thus, the Court underscored the clear distinction between the promulgation of a regulation which is subject to a deliberative process, as was at issue in *Haggar*, and the issuance of an informal ruling letter which involves only a limited review.

II. The Government's Expansive Reading of 19 U.S.C. § 1502(a) Is Not Supported by a Plain Reading of the Statute or Its Legislative History.

The Government cites 19 U.S.C. § 1502 throughout its brief, but in disregard for how the Congress actually worded the statute. The Government states in its brief, beginning on page 5:

> That statute authorizes the Secretary of the Treasury to adopt "rules and regulations" providing for the issuance of such "binding rulings prior to the entry of the merchandise" as may "be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon * * * ."

The law itself, however, reads differently:

> **(a) Powers of Secretary of the Treasury**
>
> The Secretary of the Treasury shall establish and promulgate such rules and regulations not inconsistent with the law (*including regulations establishing procedures* for the issuance of binding rulings prior to the entry of the merchandise concerned), and may disseminate such information as may be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon at the various ports of entry.

19 U.S.C. § 1502 (emphasis added).

Congress authorized the Customs Service to "promulgate such rules and regulations" . . . "(including regulations establishing *procedures for the issuance* of binding rulings prior to the entry of merchandise.)" The parenthetical language in 19 U.S.C. § 1502(a) was added in 1993 by Section 640 of the North American Free Trade Agreement Implementation Act, Public Law 103-182 (1993). The House of Representatives Report explains that the amendments to 19 U.S.C. § 1502, among other things, "authorize the Secretary to prescribe regulations for the issuance of binding rulings prior to the entry of merchandise." H.R. Rep. No. 361, 103d Cong., 1st Sess. 138 (1993). This amendment simply ratified what the Secretary had been doing for decades – promulgating procedural regulations for the issuance of rulings and issuing rulings on not only classification and appraisement, but also on every other aspect of the law the Customs Service administers.

The legislative history establishes that the purpose for adding the parenthetical language was to provide importers with a procedure by which they could obtain guidance from the Customs Service *prior to entry* in exercising their new responsibilities to classify and appraise merchandise imposed by Section 637(a) of the North American Free Trade Agreement Implementation Act. Long before 1993, Congress had directed that the Secretary of the Treasury provide rules and regulations and disseminate classification and appraisement information. The statute was and still is directed to Customs officials themselves, not the public and not the courts, and was intended to ensure that Customs officials throughout the country classify and appraise merchandise fairly, impartially, and uniformly. The Government's expansive reading of 19 U.S.C. § 1502(a) is dictated by its need, after this Court's

decision in *Christensen*, to find a specific Congressional delegation to issue rulings. However, a plain reading of the statute and its legislative history establishes that Congress' intent was much more limited.

III. There are Practical, Commercial Reasons for Not Giving Deference to Customs Service Classification Rulings.

A. It is Difficult to Distinguish Between Different Types of Rulings.

The standard established by *Chevron* is clear that only interpretive regulations, which are promulgated through the formal notice and comment procedures, are entitled to judicial deference. Extending this deference to classification and appraisement rulings would require the courts to draw distinctions between various forms of such rulings, between classification and appraisement letter rulings and letter rulings on other laws administered by Customs, and between letter rulings and other types of Customs policy pronouncements. There is no simple way to distinguish, for purposes of determining the applicable level of deference, between tariff classification rulings and Customs' pronouncements of policy and interpretation in other contexts. Should the Court depart from its current "bright-line" position, it would create great uncertainty as to the deference to be accorded to these other agency statements.

1. Tariff classification rulings represent only one of the many ways Customs issues interpretive statements of agency position.

A review of the various forms of Customs' written pronouncements may demonstrate to the Court the inappropriateness of extending any form of deference to classification rulings. Such rulings may take the form of a brief letter describing the merchandise and providing a reference to the applicable tariff provisions, or they may contain a detailed description of the merchandise and a fuller analysis of the relevant tariff provisions, the history of those provisions, and pertinent court decisions. In addition to rulings, other forms of agency written decisions include: internal advice memoranda issued by Customs' headquarters in response to requests from officials at local ports of entry (issued after goods have entered the country);[16] protest review decisions, which are issued by headquarters in response to a request from an importer who seeks independent review of a port official's decision (issued after goods have entered the country);[17] Treasury Decisions, generally published in the Customs Bulletin and on occasion in the Federal Register, which are issued by headquarters to address particular policy issues, including its interpretation of tariff terms; General Notices, yet another form of policy statement issued by headquarters, generally published in the Federal Register; "Informed Compliance" publications on the classification of many products, which are made available to the public on Customs' website;[18] and Directives and other

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16 19 C.F.R. § 177.11.

17 19 C.F.R. § 174.23 *et seq.*

18 According to a statement contained at the beginning of every Informed Compliance publication, these publications reflect "the Customs Service's position on or interpretation of the applicable laws or

documents published on Customs' website and electronic bulletin board, which contain official statements of agency position.

2. Customs rulings are "binding" in only a limited sense.

As the Government asserts, the law authorizes Customs to promulgate "regulations establishing procedures for the issuance of binding rulings."[19] The term "binding rulings," though much relied upon by the Government, is not defined either in the statute or in Customs' regulations. While the regulations address the "binding" nature of ruling letters, they also indicate a distinction between "rulings" and "ruling letters." Customs defines the term "ruling" as "a written statement issued by the Headquarters Office or the appropriate office of Customs ... that interprets and applies the provisions of the Customs and related laws to a specific set of facts."[20] Rulings may be set forth in "ruling letters" issued in response to written requests,[21] or they may be "other rulings," which are "statements of the official position of the Customs Service which are likely to be of widespread interest and application" and "are published in the Customs Bulletin, as described in § 177.10."[22] Section 177.10, in turn, refers to the publication of

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regulations as of the date of publication." Informed Compliance publications are usually entitled, "What Every Member of the Trade Community Should Know About: [Issue or Commodity Name]." Customs has issued Informed Compliance publications addressing the classification of over thirty types of commodities, such as caviar, children's apparel, and festive articles.

19 19 U.S.C. § 1502(a).

20 19 C.F.R. § 177.1(d)(1).

21 *Id.*

22 19 C.F.R. § 177.8(b).

"any precedential decision," which term includes, for purposes of that paragraph, "any ruling letter, internal advice memorandum, or protest review decision."[23] However, whereas § 177.8(b) rulings are to be published in the Customs Bulletin, "precedential decisions" need not be as long as they are made available for public inspection.

While the regulations do not discuss binding rulings, Customs makes very clear in its regulations that a ruling letter (as opposed to a ruling) is "binding" only on the Customs Service and on the party who requested it,[24] and that other parties are not to rely on it:

> A ruling letter is subject to modification or revocation without notice to any person, except the person to whom the letter was addressed. Accordingly, no other person should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter.

19 C.F.R. § 177.9(c).

Thus, under its authority to promulgate regulations for the issuance of "binding rulings," Customs has created a confusing array of agency pronouncements. Ruling letters are

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23 19 C.F.R. § 177.10(a).

24 19 C.F.R. § 177.9(a). "A ruling letter issued by the Customs Service under the provisions of this part represents the official position of the Customs Service with respect to the particular transaction or issue described therein and is binding on all Customs Service personnel in accordance with the provisions of this section until modified or revoked."

binding only on the requesting party and on Customs; some ruling letters (as well as "other rulings") may be "precedential" and "of widespread interest and application" and are to be published in the Customs Bulletin or otherwise made available to the public; *but under no circumstances should third parties rely upon them or assume that the rulings' principles will be applied to any other transaction.* Nonetheless, the Government asks the Court in this context to extend *Chevron* deference to tariff classification rulings, when Customs will not permit any third party to rely on those rulings.

As acknowledged in *Chevron*, "[t]he power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress." *Chevron*, 467 U.S. at 843. Where the Customs Service counsels in its regulations against relying on any ruling or the principles contained in those rulings, even in so-called "precedential decisions," it can not be said to be "making . . . rules to fill any gap left, implicitly or explicitly, by Congress."

3. The inconsistent and changeable nature of Customs rulings makes them an inappropriate subject for *Chevron* deference.

As noted above, customs rulings may be issued either by attorneys at Customs headquarters or by import specialists at individual ports of entry. As the Federal Circuit noted in *Mead*, these rulings are "an even less formalized body of interpretation than IRS revenue rulings." 185 F.3d at 1308. Unlike IRS revenue rulings, they do not issue from a single entity within the agency, and few of them are actually published. *See id.* Customs rulings suffer from a lack of

consistency in terms of both the nature and degree of legal analysis. For example, one importer may obtain a one-paragraph ruling from an import specialist stating how a particular product should be classified but giving no explanation for the conclusion, whereas another importer may obtain a lengthy, well-reasoned ruling from Customs headquarters which supports its conclusion with a clear exposition of the facts and controlling legal authority. A decision that all tariff classification rulings deserve deference would also encompass the former type.

Furthermore, Customs appears not even to have a full appreciation of rulings it has issued in the past. This results in, among other problems,[25] the issuance of rulings that reach different conclusions on the correct classification of what appear to be identical products.[26] Customs appears not always to research its own position on a particular product before issuing another ruling pertaining to that product. If deference is to be given to all classification rulings, courts will have difficulty reconciling such conflicting rulings. It is conceivable that a court could be asked to review a ruling -- and give

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25 Even where Customs revokes or modifies a ruling, it does not attempt to identify existing rulings which may be affected. Instead, it inserts the following standard language into all notices of revocation or modification: "This [revocation or modification] will cover any rulings on this issue which may exist but have not been specifically identified."

26 For example, in an August 4, 1999, "General Notice," the Customs Service admitted that it "has issued inconsistent rulings regarding chemical compounds imported in bulk . . ." and requested comments from the public as to how to reconcile these rulings. General Notice: Solicitation of Comments Regarding the Classification of Pharmaceutical Products Imported for Clinical Research, 33 CUST. BULL. & DEC. 31 at 14 (Aug. 4, 1999).

judicial deference to that ruling -- when another ruling exists in which the agency reached a contradictory conclusion.

This inconsistency is underscored by the frequency with which such rulings are modified or revoked. Since January 1994, there have been 459 rulings either modified or revoked by Customs, and of these, 135 were rulings prepared by attorneys in the Office of Regulations and Rulings in Customs' headquarters.[27] These numbers suggest the rather perfunctory process by which the rulings are often issued and the frequency with which the agency acknowledges that they are incorrect or inconsistent.

4. Granting *Chevron* deference to tariff classification rulings would create uncertainty as to the level of deference owed to other forms of agency statements.

Extending *Chevron* deference to classification rulings raises the question whether deference is due to the myriad other types of non-regulation agency actions.[28] Most of Customs' pronouncements are in the nature of general policy statements (as in the case of Treasury Decisions or "informed compliance" publications), even though they may be issued through formal notice-and-comment procedures (as in the case of some -- but not all -- "General Notices"). This Court in *Christensen* clearly stated that such interpretations "do not warrant

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27 This information was obtained through a query of Fuglei's "Customs Info" CD-ROM database, which is commercially available and widely used in the trade community. The query covered the period January 1, 1994, through May 19, 2000.

28 Many rulings are not issued under 19 U.S.C. § 1502, which only applies to classification and appraisement rulings.

Chevron-style deference." *Christensen*, 120 S. Ct. at 1662. The courts' current standard -- according deference only to interpretive regulations -- is clear and workable.

Granting judicial deference to Customs' pronouncements would also require courts to acquiesce in what may be improper assumptions of authority by the agency. For example, in a "final interpretation" published in the Federal Register regarding criteria to be used in determining country of origin marking, Customs announced that it was departing from judicial precedent on the issue because it believed that precedent was no longer valid. While the court had expressly indicated that a shift from a producers' good to a consumers' good is relevant in determining whether the good undergoes a substantial transformation for marking purposes (*Midwood Indus., Inc. v. United States*, 313 F. Supp. 951 (Cust. Ct. 1970), *appeal dismissed*, 57 C.C.P.A. 141 (1970)), Customs announced its decision not to follow this case. "It is Customs' opinion that based on subsequent court decisions applying substantial transformation analysis, *Midwood* would be decided differently today." *Application of Producers' Good Versus Consumers' Good Test in Determining Country of Origin Marking; Final Interpretation*, 65 Fed. Reg. 13,827 (2000). This statement of the agency's position was, like a customs regulation, promulgated through formal notice and comment procedures and intended to be a rule of general application. If deference were extended to customs rulings, which lack such procedural safeguards, then a court would also seem to be required to grant deference to agency pronouncements such as these, giving Customs almost unfettered discretion to contradict

otherwise valid case law in establishing agency policy.[29] There is no possible reason for requiring the courts to defer to Customs on the construction of a law when Customs feels free to disregard court decisions it finds unpersuasive.

B. Giving *Chevron* Deference to Rulings Would Discourage Commercial Parties from Seeking a Ruling from the Customs Service, and Would Result in Increased Litigation and Unpredictable Outcomes.

The Government argues that there is "substantial practical importance" attending the decision whether to defer to rulings issued by the Customs Service. Government's Brief at 37. According to the Government, the Customs Service "routinely employs" what it calls "binding rulings" to "address the proper application of the detailed customs provisions to the 'limitless factual variations' created by modern commerce." *Id.* at 37-38 (citation omitted). The Government concludes that without deference, both importers and the Customs Service would be left "without effective guidance for a wide range of transactions." *Id.* at 38.

The companies that make up this *amicus curiae* agree that there is a "substantial practical importance" to the issue before the Court today. If courts are required to give *Chevron* deference -- "controlling weight"-- to Customs Service rulings,

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[29] Since the publication of this notice, at least one judge of the Court of International Trade has indicated continuing approval of the *Midwood* rationale by citing case law that follows *Midwood*: "See, *e.g.*, *S.D.I. Technologies, Inc.* . . . (noting that a shift from producer goods to consumer goods may have some evidentiary value)." *Sassy, Inc. v. United States*, Slip Op. No. 00-93, at 9 (Ct. Int'l Trade August 2, 2000) (internal citation omitted).

the effect would be to discourage commercial parties from seeking a ruling in the first place. After all, if an importer receives a ruling from the Customs Service with which it is dissatisfied, that importer would be in the anomalous position of having a more difficult burden in court than an importer who did not receive a ruling from the Customs Service. That is, the importer would be required to show that the statute at issue is unambiguous, or if ambiguous, that Customs' interpretation is unreasonable.

Importers are not required to seek a ruling from the Customs Service. If an importer is not satisfied with the decision of the Customs Service reflected in the liquidation of an entry of merchandise, the importer must file an administrative protest contesting the decision as a prerequisite to obtaining judicial review of the matter. If the importer files a protest with the Customs Service, it will receive a decision on the protest simply allowing, denying, or allowing in part the protest. If, however, the importer also requests "further review" of the protest[30] and Customs determines that further review is warranted, then in addition to a decision on the protest, the importer will also receive a ruling in the form of a "protest review decision" from the Customs Service providing the reasons for the Customs Service's decision.

If the courts are required to give deference to Customs Service rulings, the effect would be to discourage importers from requesting a protest review decision. Importers who receive a simple decision on the protest without a ruling would then be able to challenge the decision in court without having the court give "controlling weight" to the position taken by the Customs Service.

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30 19 C.F.R. § 174.23.

Moreover, the Government has argued that the Federal Circuit's decision not to give deference to rulings will result in "expensive customs litigation and unpredictable outcomes." Government's Brief at 38. The member companies of this *amicus curiae* believe that the opposite is true.

As noted above, giving deference to rulings would discourage commercial parties from seeking rulings from the Customs Service. Importers would refrain from seeking rulings, and would use the protest procedures to obtain judicial review of any adverse ruling without having to overcome the high hurdle of proving its "unreasonableness." As is currently the practice, the courts would consider the validity of Customs' decisions based on the evidence presented at trial and the persuasiveness of the legal reasoning.

The Government has indicated that Customs' headquarters issues more than 1,000 "binding rulings" each year "involving tariff classification, customs valuation and country of origin determinations."[31] Government's Brief at 38, note 26. We acknowledge that, as Congress intended, these rulings are in many cases helpful and provide guidance to the importing community as to the Customs Service's current position on a given topic, and provide a measure of certainty to those engaged in importing. The ruling process was not, however, intended to give Customs unfettered power to limit the rights of importers and other parties to obtain effective judicial review. However, if importers are discouraged from requesting rulings because the courts must give *Chevron* deference to Customs' pronouncements, they will have lost the benefit of having this corpus of interpretation and guidance.

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31 The Government conveniently ignores the more than 10,000 ruling letters issued by other offices within Customs.

The result would be, using the Government's terms, "expensive litigation and unpredictable outcomes."

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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DATED: August 14, 2000

APPENDIX

APPENDIX

JOINT INDUSTRY GROUP

3M
Ablondi, Foster, Sobin & Davidow, p.c.
Adduci, Mastriani & Schaumberg, LLP
Air Courier Conference of America
Airfreight Warehouse Corporation
Akin, Gump, Strauss, Hauer & Feld, LLP
American Chemistry Council
American Electronics Association
American Institute for International Steel
American Iron and Steel Institute
Arent, Fox, Kintner, Plotkin & Kahn
Arter & Hadden
Arthur Andersen & Company
Arthur Andersen, LLP
Arthur Cherry Associates
Association of International Automobile Manufacturers
Baker & McKenzie
Barnes, Richardson & Colburn
Blasdel & Company
Border Trade Alliance
Broker Power, Inc.
C.H. Powell Company
Capstan Trade Systems
Case Corporation
Caterpillar Inc.
CNF Transportation
Compaq
Computer Sciences Corporation
Consolidated Freightways
Corning, Inc.
Deere & Company

*JOINT INDUSTRY GROUP, **continued***

Dorsey & Whitney
E.I. DuPont de Nemours & Co.
Elle International
Emery Customs Brokers
Expeditors International of Washington, Inc.
Federal Express
Ford Motor Company
General Electric
General Motors Corporation
Gibson, Dunn & Crutcher LLP
Global Customs Advisors
Gottlieb & Pearson
Hapag-Lloyd America Inc.
Hewlett-Packard
Hitachi America, Ltd.
Honeywell
Hoppel, Mayer & Coleman
Intel Corporation
International Business Machines
International Mass Retail Association
International Warehouse Logistics Association
Int'l Business-Government Counsellors
JBC International
Katten Muchin & Zavis
Ken Kumm
Kent & O'Connor
KPMG LLP
Law Offices of Stewart & Stewart
Levi Strauss & Co.
Lexmark International Inc.
Limited Distribution Services
Logicon/Northrup Grumman
Lucent Technologies, Inc.

*JOINT INDUSTRY GROUP, **continued***

MAERSK Sealand
Matsushita Electric Corporation
Mattel
Microsoft Corporation
Miller & Company P.C.
Motorola, Inc.
National Association of Foreign Trade Zones
National Association of Manufacturers
National Retail Federation
NCBFAA
Neville, Peterson & Williams
NextLinx Corporation
Northern Telecom
P&O Nedlloyd Limited
Pacific Merchant Shipping Association
Parker & Company
Parker & Company
Patton Boggs
Powell, Goldstein, Frazer & Murphy, LLP
PricewaterhouseCooopers LLP
Roadway Express, Inc.
Rockwell Collins, Inc.
Rode & Qualey
Ross & Hardies
Samuel Shapiro & Co., Inc.
Sandler, Travis & Rosenberg, P.A.
Sara Lee Knit Products
Sea-Land Service, Inc.
Serko & Simon
Shea & Gardner
Sonnenschein, Nath & Rosenthal
Sony Electronics Inc.
Stein, Shostak, Shostak, & O'Hara

*JOINT INDUSTRY GROUP, **continued***

Sun Microsystems, Inc.
Tech Data
Texas Instruments, Inc.
The Dow Chemical Company
The Procter & Gamble Distributing Co.
Tower Group International
Toyota Motor Sales, U.S.A., Inc.
Toyota Tsusho America, Inc.
Unz & Company
UPS Customhouse Brokerage
Vastera
Vorys, Sater, Seymour and Pease LLP
Wal-Mart Stores, Inc.
Warner-Lambert Company
Washington International Insurance Co.
West Gulf Maritime Association
Weyerhaeuser
Wilmer, Cutler & Pickering

ALLIANCE OF AUTOMOBILE MANUFACTURERS

BMW Group
Daimler Chrysler Corporation
Fiat Auto S.p.A.
Ford Motor Company
General Motors Corporation
Isuzu Motors America, Inc.
Mazda North American Operations
Mitsubishi Motor Sales of America, Inc.
Nissan North America, Inc.
Porsche Cars North America, Inc.
Toyota Motor North America, Inc.

Volkswagen of America, Inc.
Volvo Cars of North America, Inc.

INTERNATIONAL MASS RETAIL ASSOCIATION

Retail Member Companies
The 1/2 Off Card Shop/Card and Party Giant
A.J. Wright
AAA National Headquarters
Academy Corp.
Ace Hardware
Active International
Advance Auto Parts, Inc.
Aerial Company, Inc.
Almacenes Exito S.A.
Ames Department Stores, Inc.
Ammar's, Inc.
Armature Inc.
Army & Air Force Exchange Service, HQ
AutoZone
B.J.'s Wholesale Club Inc.
Babbage's Etc.
The Bargain! Shop Holdings, Inc.
Bass Pro Shops
Bath & Body Works
The Behnke Nurseries Co.
Benny's Inc.
Best Buy Company, Inc.
BestBuy.Com
Bi-Way Stores Limited
Big W Limited
Bill's Dollar Stores Inc.
Blain Supply, Inc.
BOAT/U.S. (Boat America Corporation)

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Retail Member Companies

Bradlees, Inc.
Brand Names Sale
BrandsMart U.S.A.
Burlington Coat Factory
Canadian Tire Corporation Limited
CANEX
CarMax
Casa Video
Chase-Pitkin Home & Garden
Circuit City Stores, Inc.
Claire's Stores, Inc.
The Clicks Organisation (PTY) Ltd
COMPRAS COMODAS
Consolidated Stores Corporation
Copeland's Sports
CSK Auto, Inc.
Denning House - A Buck Or Two
DFS Group Ltd.
Dickies Outlet Stores
The Disney Store, Inc.
Dollar General Corporation
Dollar Tree Stores, Inc.
Drogueria Y Farmacia El Fenix, S.A. de C.V.
Drug Emporium
DSW Shoe Warehouse
Duckwall-Alco Stores, Inc.
Eastern Mountain Sports, Inc.
Exodus Genesis
Express
Factory 2-U Stores, Inc.
Family Dollar Stores, Inc.
Farm & Fleet of Dodgeville, Inc.

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Retail Member Companies

Farmacias Arrocha
Fleetwood Retail Corp.
Food Lion, Inc.
Frank's Nursery & Crafts, Inc.
Fred's, Inc.
G.I. Joe's Inc.
Garden Ridge Corporation
Giant Eagle, Inc.
Giant Tiger Stores Ltd.
Gibson's
The Glidden Company
Goodwill Industries International, Inc.
Goody's Family Clothing, Inc.
Gordman's, Inc.
Gordon Brothers Group, LLC
Grainger Industrial Supply
Great American Group
Gregg Appliances, Inc.
Grupo Triangulo
Healthy Fundraising, Inc.
Heilig-Meyers Co.
Hilco Trading Company, Inc.
The Home Depot, Canada
The Home Depot, U.S.A., Inc.
Home Hardware Stores Limited
Home Shopping Network
HomePlace of America, Inc.
Hub Distributing, Inc.
Hudson's Bay Company
IKEA U.S., Inc.
J. Baker, Inc.
Jerry's Home Improvement Center

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Retail Member Companies

Jo-Ann Stores, Inc.
Kay International
Kay-Bee Toy Stores, Inc.
Kinko's, Inc. World Headquarters
Kitchin's Stores
Kmart Canada Ltd.
Kmart Corporation
La Fragua S.A., C/o CARBEN, Inc.
Lari Group Co., Inc.
Lechters, Inc.
Levitz Furniture Corporation
Lian Hua Supermarket Co., Ltd. (Lian Mao Corp.)
Lima Bargain Center
The Limited, Inc.
Lowe's Companies, Inc.
Marburn Stores, Inc.
Marina Export, Inc. (Almacenes Vivero S.A.)
Marks & Spencer, PLC
Maurices Incorporated
McDonald's Corporation
Meijer, Inc.
Mervyn's California
Michaels Stores, Inc.
Midas International Corporation
Mills Supply, Inc.
Modell's Sporting Goods
Modern Woman
Navy Exchange Service Command
Northern Tool & Equipment Co.
Ocean State Jobbers, Inc.
Office Depot, Inc.
Ollie's Bargain Outlets, Inc.

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Retail Member Companies

One Price Clothing Stores, Inc.
Orscheln Farm and Home L.L.C.
Pamida, Inc.
Party City Corporation
Payless Cashways, Inc.
Payless ShoeSource, Inc.
Penske Auto Centers
PEP BOYS
Petco Animal Supplies, Inc.
PETsMART, Inc.
Price-Less Drug Stores, Inc.
Pricebusters Co., Ltd.
Purina Mills America's Country Store
Quality Stores, Inc.
Regis Corporation
Rooms To Go, Inc.
Royal Duty-Free Shops, Inc.
ru4.com
SAAN Stores Ltd.
SAM'S Club
Schottenstein Stores Corporation
Scotty's
Shaw's Supermarkets
Shonac Corporation
ShopKo Stores, Inc.
Shorr Electronic's Inc.
The Shui Hing Company, Ltd.
Simply Fashion Stores, Ltd
The Sports Authority, Inc.
Starbucks Coffee Co.
Strauss Discount Auto
Sunglass Hut International

Syms Corporation
Target Corporation
Target Stores, Inc.
Toy Biz, Inc.
Tractor Supply Company
Trend-Lines, Inc.
Truck Pro
TruServ Corporation
Urban Outfitters
Value City Department Stores, Inc.
Variety Wholesalers, Inc.
Wal-Mart Canada, Inc.
Wal-Mart Stores, Inc.
wal-mart.com
Warner Brothers Studio Stores
West Marine
WhatsHotNow.Com
Wilkinson Hardware Stores Ltd.
Woolworths Limited
Zale Corporation
Zellers Inc.

Supplier Member Companies

'K' Line America, Inc.
3M Company
A & W Products Co., Inc.
A. T. Cross Company
A.J. Siris Products Corporation
AAi.Foster Grant, Inc.
Accessory Network
Acclaim Entertainment
Accu Chek, Inc.

Aero Plastics, Inc.
Air Plus Limited
Aladdin Industries, Inc.
Alliance Logistics Consulting Group, Inc.
Almar Sales Co.
Alpha Security Products
American Coin Merchandising
American Color Graphics
American Dream Team Network
American Express Company
American Greetings Corporation
Amerock Cabinet Hardware
Ames True Temper
Ampad
Anchor Hocking Glass Company
Anderson Merchandisers, Inc.
Andis Company
Anheuser-Busch Companies
Ann's House of Nuts, Inc.
Appliance Co. of America LLC
Applied Communications, Inc.
Applied Graphics Technologies
Applied Science Fiction
ARC International
Arch Chemicals, Inc.
Arthur Andersen LLP
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Aurora Foods, Inc.
Avista Advantage
B & G Foods, Inc.
Baptista's Bakery

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Bax Global
Bayer Corporation, Consumer Care Division
Bemis Manufacturing Company
Benckiser Consumer Products
Benetton Sportsystem
Bestfoods
Bestform, Inc.
The Betesh Group
BIC Corporation
Biederlack of America
Binney & Smith Inc.
Bissell, Inc.
Black & Decker (U.S.), Inc.
Braun Inc.
Braun National Retail Services
Bretlin Inc.
Brian P. Hakan & Associates, Inc.
Briggs & Stratton Corporation
The Brinkmann Corporation
Buena Vista Home Entertainment
Bulldog Hardware
Burian & Assoc., Inc.
Burlington Industries
The Burlington Northern and Santa Fe Railway Company
The Buschman Company
Butler Home Products
C&S Products Co., Inc.
California Cartage Company, Inc.
The Campbell Group
Campbell Soup Company
CANDLE-LITE

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Cheyenne Industries
Child's Play
Chipman-Union, Inc.
Cleaning Solutions Group
Clear-Vu Products
The Clorox Company
Coats & Clark
The Coca-Cola Company - Licensing Division
Coca-Cola USA
COELIMA USA, Inc.
The Coleman Co., Inc.
Coleman Consulting Group, Inc.
Colgate-Palmolive Co.
Command Security Corporation
Con-Tact Brand/Decora, Inc.
Conair Corporation
Conimar Corporation
Conros Corporation
Consolidated Freightways Corp.
Cooper Lighting/Regent Lighting
Copco
Corporate Security Management, Inc.
Cox Target Media
CPM Worldwide, LLC
Cranston Print Works, Co.

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Crisplant Inc.
Crown Equipment Corporation
Crystal Art Gallery
CSS Industries, Inc.
Dale Tiffany, Inc.
Decision Point Systems
Del Laboratories, Inc.
Del Monte Foods
Del Pharmaceuticals, Inc.
Deloitte & Touche LLP
Deluxe Payment Protection Systems, Inc.
Demand Management Inc.
Deni/Keystone Manufacturing Co., Inc.
Design Forum
Did You Sports
Discount Store News
Discover Business Services
Disney Consumer Products
Dr Pepper / Seven Up, Inc.
Dremel
Drypers Corporation
DSL Integrated Logistics, Inc.
Dugan Valva Contess
Dunbar Armored
Duracell North Atlantic Group
Dynamic Express, Inc.
Dyno Merchandise
E&J Gallo Winery
E3 Corporation
Eastern America Transport & Warehousing, Inc.

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
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Entergy Services, Inc.
ERO Industries, Inc.
ERS International, Inc.
Esselte Corporation
ETA Transportation, Inc.
The Eureka Company
Ex-Cell Home Fashions
Exel Logistics Americas
EZ Paintr
Fairchild Publications
Fantasia Accessories, Ltd.
Fasteners For Retail
Fedders North America
The Federal Wholesale Group
FedEx Services
Feldstein & Associates, Inc.
Fiesta Gas Grills, LLC
Fifth Avenue Channel Retail
First Act Inc. Entertainment & Publishing
First Alert
The First Years
Fiskars Consumer Products, Inc.
Flents Products Company, Inc.
Floor Graphics
Floor Ready Retail Processing
Florida Power & Light Co.
Forrester & Vos Co.
Fort James Corporation

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Supplier Member Companies

Fox Consumer Products
Fragrance Solutions
Franco Manufacturing Co., Inc.
Franklin Sports, Inc.
Freeride.Com, LLC
French Toast
Frito-Lay, Inc.
Fruit of the Loom
Fuji Photo Film USA, Inc.
Garrity Industries
GE Home Electric Products, Inc.
GEA Management & Consulting
Gemini Industries, Inc.
GENCO Distribution System
General Mills, Inc.
Georgia-Pacific Corporation
Gerber Childrenswear, Inc.
The Gillette Company
Ginsey Industries
Glenoit Corporation
Goody Products
Goya Foods, Inc.
Grosfillex
H. J. Heinz Co.
The Haddad Apparel Group, Ltd.
Hallmark Cards, Inc.
Hallmark Jewelry
Hamilton Beach/Proctor-Silex, Inc.
Hanover Accessories
Happy Kids
Harbortown Industries, Inc.
Harper Leather Goods

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Supplier Member Companies

Harte - Hanks Direct Marketing
The Hartz Group
Hasbro, Inc.
Haywin Textile Products, Inc.
Hedstrom Corporation
Heinz Pet Products
Helen of Troy, L.P.
Helmac Products Corp.
Henry Doneger Associates, Inc.
HMG Worldwide
Holiday Housewares, Inc.
The Holmes Group
Home Products International
Honeywell Consumer Products
The Hoover Company
Hormel Foods Corporation
HotOffTheWire.Com
Howard Schultz & Associates International
Hub Group, Inc.
Hudd Distribution Services, Inc.
Huffy Corporation
Hypnotic Hats, Ltd.
IBM Corporation
ideavillage.com
Imperial Home Decor Group
Information Resources, Inc.
Innovative Global Consulting, Inc.
Integrated Business Consultancy
Intercraft/Holson Burnes
Interlake Material Handling, Inc.
Intermatic, Inc.
International Silver/Farberware Home Products

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Supplier Member Companies

Internet Cash.Com
Intertek Testing Services
Invacare Corporation
IRIS USA, Inc.
iSolve.com
J & H Marsh McLennan
J & M, Inc. - The Tattoo Source
J.E. Morgan Knitting Mills
Jack Link's Beef Jerky
Jelmar
Jerzees
Jevic Transportation Inc.
Jockey International, Inc.
Johnson & Johnson
Joseph Pedott Advertising/Joseph Enterprises Inc.
Just My Size Clothing Company
K & M Associates, L.P.
K' nex Industries
Kayser-Roth Corporation
Keebler Company
Kellwood Company
Kenzer Corporation
Keter North America
Kids International Corporation
Kikomo, Ltd.
KitchenAid
Konica Photo Imaging
KPMG
Kraco Enterprises, Inc.
Kurt Salmon Associates
L&N Sales and Marketing, Inc.
L'eggs Products

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Supplier Member Companies

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L.R. Nelson Corporation
Lamour Hosiery USA
Lancaster Colony Corporation
Lander Co., Inc.
Lasko Metal Products, Inc.
Learning Horizons
LeeRowan
Leggett & Platt
Levolor Home Fashions
Libbey Inc.
LifeScan, Inc.
Lifetime Hoan Corporation
Lion Brand Yarn Company
Lipton
The Little Tikes Company
Lochridge & Company
Logistics Information Systems, Inc.
Loss Prevention Products, Inc.
Loss Prevention Systems
Lozier
Lumilite Products Co.
M&M / Mars
M-D Building Products, Inc.
M.R.S. Companies
M.S. Carriers
Madix Store Fixtures
Maersk Logistics
Magic Sliders L.P.
Magla Products
Magnivision
Main Street Products, LLC

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Supplier Member Companies

Major League Baseball Properties
Malt-O-Meal Company
Mancini Safe Company
MANCO, Inc. - A Henkel Group Company
MarketMAX, Inc.
MarketSource Corporation
Masonways Indestructible Plastics
Master Lock Company
Mattel, Inc.
Maurice Sporting Goods, Inc.
Maxell Corporation of America
MBR Industries
McCormick & Company, Inc.
Mead Consumer & Office Products
MEAG Power
The Media Group, Inc.
Media News Group
MEG
Meguiar's, Inc.
MELITTA USA, INC.
Meridian Advertising
The Metal Ware Corporation
METO USA
Meyer Corp.
Micro Software Services, Inc.
Milliken Rugs
Milnot/Beech-Nut Company
MinderSoft, Inc.
Mirro/WEAREVER
Mohawk Rug & Textiles
Motion Systems
Motorola

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Supplier Member Companies

Motorola TalkAbout
MTD Products, Inc.
Nabisco Food Company
National Manufacturing Company
National Picture & Frame Company
National Retail Systems
NationaLease
Native Tan
NCR Corporation
Nestle U.S.A.
The Network, Inc.
Neuville Industries, Inc.
New Creative Enterprises, Inc.
New Energy Ventures
New West Energy
Newell Industries Canada, Inc.
Newell Office Products
Newell Rubbermaid Inc.
Newell Window Furnishings Company
NFL Properties
Nickelodeon Consumer Products
Nomus Interiors, Inc.
Norelco Consumer Products Company
North American Plastics Corporation
Northland Cranberries, Inc.
NorthSound Music Group, Inc.
Nourison Rug Corp.
NOVA Home Appliances Mfg. Company, LLC
Novartis Consumer Health
Novus Services, Inc.
O'Sullivan Industries, Inc.
The Ocean Group

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Supplier Member Companies

OG&E Electric Services
Old Dominion Freight Line, Inc.
Old Williamsburgh Candle Corporation
Omega Paw, Inc.
Opus Inc.
Orient Consolidation Services
Orion Systems
Osram Sylvania Products Inc.
OurPet's
Over and Back, Inc.
Pacer International
Pacific Alliance/Regatta
Packaging Concepts Ltd.
Pan-Oston Company
Panasonic Battery Sales Group
Paragon Trade Brands
Parker Metal Corporation
The Paul Schultz Companies
Pen-Tab Industries, Inc.
Pentech International
Pentel of America, Ltd.
Pepsi-Cola Company
The Perrier Group of America
Personal Optics
Pet Friendly, Inc.
The Pfaltzgraff Company
Philips Lighting Company
PICS Retail Networks
Pilot Pen Corporation of America
Pinkerton Services Group
Pinnacle Art & Frame
Pioneer Photo Albums, Inc.

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Supplier Member Companies

Plainwell Tissue, Inc.
Plano Molding Company
Plochman, Inc.
Plus Mark, Inc.
Polaroid Corporation
Premier Candle Corp.
Presto Products Company
Price Waterhouse Coopers
PriceWaterhouse Coopers
Procter & Gamble Company
Procter & Gamble Company
Professional Logistics Management Co.
The Profit Recovery Group International, Inc.
ProFoot Products
Progressive International Corp.
Projexx, LLC
Protex International Corporation
Pyramid Accessories, Inc.
The Quaker Oats Company
Quebecor World
R Brands
R. M. Palmer Company
R.R. Donnelley & Sons Company
Radio Systems
Ralston Purina Company
Rapistan Systems
The Raymond Corporation
Rayovac Corporation
Real Time Solutions
Rebound
Red Devil, Inc.
Red Oak Farms, Inc.

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Supplier Member Companies

Rehrig International, Inc.
Reid Psychological Systems
Reliant Energy
Rembrandt Corporation
Remington Products Company, L.L.C.
Renfro Corporation
Retail Distributors, Inc.
Retail Merchandiser
RetailExchange.Com
Revlon Beauty Care Division
Revlon Classic Cosmetics & Fragrance
Revlon Inc.
Revlon Professional Products Group
REW Marketing, Inc.
Reynolds Metals Company
RGIS Inventory Specialists
Roadway Express, Inc.
Robinson Knife Company
Rollins Leasing Corp.
Romar
Ross Products Division
Royal Appliance Manufacturing Co.
Royal Floor Mats
Royal Lace/Royal Brites
Rubbermaid Home Products
S-B Power Tool Company
SacSaver, Inc.
Safe Science
Safe-Strap Company, Inc.
Safety 1st Canada, Inc.
Safety 1st, Inc. USA
Saft America Inc., Licensee of the Polaroid Corp. for C

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Supplier Member Companies

Salson Logistics Inc.
Salton/Toastmaster/Farberware
Sanford
SAP American
Sara Lee Branded Apparel
Sara Lee Sock Company
SaraMax Apparel Group, Inc.
Sarne' Corporation
SAS Group, Inc.
SC Direct, Inc.
SC Johnson Wax
Schreiber Foods, Inc.
SDI Industries, Inc.
SDI Technologies, Inc.
Se-Kure Controls, Inc.
Securitech Group, Inc.
Security Source, Inc.
Sedgwick Risk Management
Sedlak Management Consultants, Inc.
Select-A-Vision
Sensormatic Electronics Corporation
Sentry Group
Sentry Technology Corporation
Serengeti Eyewear, Inc.
Sergeant's Pet Products
Shalom International Corp.
ShopperTrak (A Division of Quadrix Corp.)
ShopVac Corporation
Shortage Control, Inc.
Signature Apparel
SII Marketing International, Inc.
Silicon Energy

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Supplier Member Companies

Simple Green
Sisco, Inc.
Smith Corona Corporation
South Carolina Electric & Gas Company
Southern California Edison
Southern Company
Spontex, Inc.
Springs Industries
Springs Window Fashions
St. George Crystal Ltd.
The Stanley Works
The Staubach Company
Sterilite Corporation
Store Opening Solutions
Strategic MindShare Consulting
Stylette
SubmitOrder.Com
Sunbeam Health & Safety Company
Sunlite Casual Furniture
Super Glue Corporation
Symbol Technologies, Inc.
Syratech Corporation
Syroco, Inc.
Tahiti Apparel/Signal Apparel
Tamor Corporation
Tasco Worldwide, Inc.
TC Advertising
TDK Electronics Corporation
TeleBrands Corporation
Telxon Corporation
Temerlin McClain
Teters Floral Products, Inc.

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Supplier Member Companies

Tetley U.S.A., Inc.
The Thermos Company
Thermwell Products Co., Inc.
Thomas Nelson Publishers, Inc.
Thorco Industries, Inc.
Tibbett & Britten Group
Tilia, Inc.
TimeCorp, A Division of Hewlett-Packard
Timex Corporation
Toastmaster, Inc.
Totes - Isotoner Corp.
Town & Country Linen Corp.
TradeOut.Com
Trans-Pacific Lines, Ltd.
Travel Smart by Franzus
TRISTAR Products, Inc.
Tropical Sportswear Int'l
Tropicana Products, Inc.
TTX Company
Tultex Corporation
Turn Up the Music, Inc.
Turtle Wax, Inc.
TXU Electric & Gas
U.S. Jesco International Ltd., Inc.
U.S. Mint
Unarco Material Handling, Inc.
Unilever Home & Personal Care USA
UnionTools, Inc.
United States Mutual Association (USMA)
United Steel & Wire Company
USA Detergents, Inc.
USF Distribution

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Supplier Member Companies

USF Processors
Vandale Industries
Vantage Industries
Vassarette
Vermont American Tool Company
VF Corporation
VF Jeanswear
Vitran Logistics
VLINX, Inc.
Voguestrap
W & H Systems, Inc.
Wahl Clipper Corporation
Walls Industries, Inc.
Warner Bros. Consumer Products
Washington Inventory Service
WaterPik, Inc.
Waxman Consumer Products Group, Inc.
WD-40 Company
Weaver Popcorn Company Inc.
Webster Industries
Weitech, Inc.
Wellington Leisure Products, Inc.
Wells Lamont Corporation
Werner Enterprises
Western Inventory Service Ltd.
WestPoint Stevens
Whitmor
Whitney Design, Inc.
Wilhold
Williams Foods Inc.
Williamson-Dickie Manufacturing Co.
Wilson Sporting Goods Company

INTERNATIONAL MASS RETAIL ASSOCIATION, continued
Supplier Member Companies

Wilton Industries
World Kitchen, Inc.
Worldwide Dreams LLC
Wundies Enterprises, Inc.
Yuppie Puppy Pet Care, Inc.
ZELCO Industries, Inc.
Zeta Consumer Products Corporation
Zodiac